

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID FUENTES, SR.,

No. 2:23-cv-0386 KJN P

Plaintiff,

ORDER

v.  
MULE CREEK STATE PRISON, et al.,

Defendants.

Plaintiff is a former state prisoner, proceeding pro se and in forma pauperis. Plaintiff's amended complaint is before the court. As discussed below, plaintiff's amended complaint is dismissed with leave to amend.

Screening Standards

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact.

Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an

1 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
2 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
3 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
4 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
5 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
6 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at  
7 1227.

8 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain  
9 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
10 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic  
11 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
12 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a  
13 formulaic recitation of the elements of a cause of action;” it must contain factual allegations  
14 sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550 U.S. at 555.  
15 However, “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the  
16 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v.  
17 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal  
18 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as  
19 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the  
20 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236  
21 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

22 The Civil Rights Act

23 To state a claim under § 1983, a plaintiff must demonstrate: (1) the violation of a federal  
24 constitutional or statutory right; and (2) that the violation was committed by a person acting under  
25 the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Jones v. Williams, 297 F.3d  
26 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim unless the  
27 facts establish the defendant’s personal involvement in the constitutional deprivation or a causal  
28 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.

1 See Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); Johnson v. Duffy, 588 F.2d 740, 743-44  
 2 (9th Cir. 1978).

3 Plaintiff's Verified Amended Complaint

4 Plaintiff's amended complaint is a duplicate of his original complaint,<sup>1</sup> except in two  
 5 ways: First, plaintiff added an injury: “my skin and brain appear to be damaged by the  
 6 chemicals, my skin is damaged and my brain.” (ECF No. 11 at 4.) Second, plaintiff supplied  
 7 over 100 pages of exhibits, including photos of the alleged injuries to his skin. (ECF No. 11 at 7 -  
 8 10.)

9 Discussion

10 Plaintiff's amended complaint again fails to include specific charging allegations as to  
 11 each named defendant, referring only to “Sergeant, Counselor, Psychiatrist.” (ECF No. 11 at 3;  
 12 see also ECF No. 1 at 3.) Plaintiff fails to allege specific facts showing that each named  
 13 defendant knew plaintiff's safety was at substantial risk yet failed to take reasonable measures to  
 14 stop the harm.<sup>2</sup> Indeed, plaintiff fails to set forth specific facts as to how and when plaintiff

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15 <sup>1</sup> Plaintiff contends that defendants failed to protect plaintiff from assault by other inmates, based  
 16 on the following. While he was housed at Mule Creek State Prison (“MCSP”), plaintiff was  
 17 “tortured with intent to kill by several inmates,” who “raped, sexually humiliated, stabbed with  
 18 metal pick and injected [plaintiff] all over his body with chemicals.” (ECF No. 11 at 3; see also  
 19 ECF No. 1 at 3.) Three inmates gave plaintiff injections on a regular basis, and the injections  
 20 rendered plaintiff unconscious for hours and took place at bedtime. Plaintiff “brought up all these  
 21 issues to the Sergeant, Counselor, Psychiatrist for over a year and they didn't seem to care,  
 22 nothing was done.” (Id.) Plaintiff shared these traumatic experiences with close family members,  
 23 fellow officers and friends, but given the failure of correctional management to protect plaintiff,  
 24 he “decided to keep it to [himself] until [his] release.” (Id.) Upon his release in March of 2020,  
 25 plaintiff began looking for mental and physical health assistance. Plaintiff now suffers post-  
 26 traumatic stress disorder, anxiety and insomnia, and has physical scars from the chemical  
 27 injections. Plaintiff seeks money damages. Plaintiff names as defendants Mr. Manning,  
 Sergeant, and Ms. Kissel, Counselor, both employed at MCSP.

28 <sup>2</sup> “The treatment a prisoner receives in prison and the conditions under which he is confined are  
 29 subject to scrutiny under the Eighth Amendment.” Farmer v. Brennan, 511 U.S. 825, 832 (1994)  
 (citing Helling v. McKinney, 509 U.S. 25, 31 (1993)). Prison officials have a duty “to take  
 reasonable measures to guarantee the safety of inmates, which has been interpreted to include a  
 duty to protect prisoners.” Labatad v. Corrections Corp. of America, 714 F.3d 1155, 1160 (9th  
 Cir. 2013) (citations omitted).

To establish a violation of this duty, the prisoner must “show that the officials acted with  
 deliberate indifference to threat of serious harm or injury to an inmate.” Labatad, 714 F.3d at

1 informed each defendant of the harm, and how each defendant failed to act to protect plaintiff. It  
 2 is also unclear whether plaintiff was housed with the three inmates at different times, or whether  
 3 plaintiff was housed in a dorm setting. Plaintiff must provide facts showing what Sgt. Manning  
 4 did or did not do that violated plaintiff's rights, and plaintiff must do the same for defendant  
 5 Kissel. Accordingly, plaintiff is granted leave to provide the required charging allegations.

6 Finally, plaintiff provided even more exhibits. It is unclear what purpose such exhibits  
 7 serve as many are not obviously related to plaintiff's claims. With respect to exhibits, while they  
 8 are permissible, Fed. R. Civ. P. 10(c), they are not necessary in the federal system of notice  
 9 pleading, Fed. R. Civ. P. 8(a). Plaintiff is advised that it is not the duty of the court to look  
 10 through all exhibits to determine whether he has claims cognizable under § 1983. Rather, the  
 11 court looks to the factual allegations contained in the amended complaint to determine whether  
 12 plaintiff stated a cognizable claim for relief under § 1983.

13 The court finds the allegations in plaintiff's amended complaint so vague and conclusory  
 14 that it is unable to determine whether the current action is frivolous or fails to state a claim for  
 15 relief. The court determines that the amended complaint does not contain a short and plain  
 16 statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible  
 17 pleading policy, a complaint must give fair notice and state the elements of the claim plainly and  
 18

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19 1160 (citing Gibson v. County of Washoe, 290 F.3d 1175, 1187 (9th Cir. 2002). This involves  
 20 both objective and subjective components. First, the alleged deprivation must be "sufficiently  
 21 serious" and, where a failure to prevent harm is alleged, "the inmate must show that he is  
 22 incarcerated under conditions posing a substantial risk of serious harm." Farmer, 511 U.S. at 834  
 23 (quoting Rhodes v. Chapman, 452 U.S. 337, 349 (1981)). Second, subjectively, the prison  
 24 official must "know of and disregard an excessive risk to inmate health or safety." Id. at 837;  
Anderson v. County of Kern, 45 F.3d 1310, 1313 (9th Cir. 1995). A prison official must "be  
 aware of facts from which the inference could be drawn that a substantial risk of serious harm  
 exists, and . . . must also draw the inference." Farmer, 511 U.S. at 837. Liability may follow only  
 if a prison official "knows that inmates face a substantial risk of serious harm and disregards that  
 risk by failing to take reasonable measures to abate it." Id. at 847.

25 The question under the Eighth Amendment is whether prison officials, acting with deliberate  
 26 indifference, exposed a prisoner to a sufficiently substantial "risk of serious damage to his future  
 27 health . . ." Farmer, 511 U.S. at 843 (citing Helling, 509 U.S. at 35). The Supreme Court has  
 explained that "deliberate indifference entails something more than mere negligence . . . [but]  
 something less than acts or omissions for the very purpose of causing harm or with the knowledge  
 that harm will result." Id. at 835.

1 succinctly. Jones v. Cnty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must  
 2 allege with at least some degree of particularity overt acts which each defendant engaged in that  
 3 support plaintiff's claim. Id. Because plaintiff failed to comply with the requirements of Fed. R.  
 4 Civ. P. 8(a)(2), the amended complaint must be dismissed. The court will, however, grant leave  
 5 to file a second amended complaint.

6 Leave to Amend

7 If plaintiff chooses to amend, plaintiff must demonstrate how the conditions about which  
 8 he complains resulted in a deprivation of plaintiff's constitutional rights. See, e.g., West, 487  
 9 U.S. at 48. Also, the complaint must allege in specific terms how each named defendant is  
 10 involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). In other words, plaintiff must provide facts  
 11 showing what Sgt. Manning did or did not do that violated plaintiff's rights, and plaintiff must do  
 12 the same for defendant Kissel. There can be no liability under 42 U.S.C. § 1983 unless there is  
 13 some affirmative link or connection between a defendant's actions and the claimed deprivation.  
 14 Rizzo, 423 U.S. at 371; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980). Furthermore, vague  
 15 and conclusory allegations of official participation in civil rights violations are not sufficient.  
 16 Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

17 A district court must construe a pro se pleading "liberally" to determine if it states a claim  
 18 and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an  
 19 opportunity to cure them. See Lopez, 203 F.3d at 1130-31. While detailed factual allegations are  
 20 not required, "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
 21 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
 22 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must provide "sufficient factual  
 23 matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft, 556  
 24 U.S. at 678 (quoting Bell Atlantic Corp., 550 U.S. at 570)).

25 A claim has facial plausibility when the plaintiff pleads factual  
 26 content that allows the court to draw the reasonable inference that the  
 27 defendant is liable for the misconduct alleged. The plausibility  
 28 standard is not akin to a "probability requirement," but it asks for  
 more than a sheer possibility that a defendant has acted unlawfully.  
 Where a complaint pleads facts that are merely consistent with a

1 defendant's liability, it stops short of the line between possibility and  
2 plausibility of entitlement to relief.

3 Ashcroft, 556 U.S. at 678 (citations and quotation marks omitted). Although legal conclusions  
4 can provide the framework of a complaint, they must be supported by factual allegations, and are  
5 not entitled to the assumption of truth. Id. at 1950.

6 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to  
7 make plaintiff's second amended complaint complete. Local Rule 220 requires that an amended  
8 complaint be complete without reference to any prior pleading. This requirement exists because,  
9 as a general rule, an amended complaint supersedes the original complaint. See Ramirez v.  
10 County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("an 'amended complaint  
11 supersedes the original, the latter being treated thereafter as non-existent.'") (internal citation  
12 omitted)). Once plaintiff files a second amended complaint, the original pleading no longer  
13 serves any function in the case. Therefore, in a second amended complaint, as in an original  
14 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

15 Finally, plaintiff is not required to provide exhibits.

16 In accordance with the above, IT IS HEREBY ORDERED that:

17 1. Plaintiff's amended complaint is dismissed.

18 2. Within thirty days from the date of this order, plaintiff shall complete the attached  
19 Notice of Amendment and submit the following documents to the court:

20 a. The completed Notice of Amendment; and

21 b. An original of the Second Amended Complaint.

22 Plaintiff's second amended complaint shall comply with the requirements of the Civil Rights Act,  
23 the Federal Rules of Civil Procedure, and the Local Rules of Practice. The second amended  
24 complaint must also bear the docket number assigned to this case and must be labeled "Second  
25 Amended Complaint."

26 Failure to file a second amended complaint in accordance with this order may result in the  
27 dismissal of this action.

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3. The Clerk of the Court is directed to send plaintiff the form for filing a civil rights complaint by a prisoner.

Dated: November 1, 2023

Kendall J. Newman  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order  
filed \_\_\_\_\_.

DATED: \_\_\_\_\_

Second Amended Complaint

Plaintiff \_\_\_\_\_